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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

NORTH AMERICAN CAPACITY INSURANCE COMPANY,

No. C 03-5521 WDB

Plaintiff,

ORDER RE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

v.

TURNER CONSTRUCTION COMPANY, et al.,

Defendants.

On April 5, 2006, the Court conducted a hearing in connection with plaintiff's Motion for Summary Judgment, filed January 9, 2006. Plaintiff withdrew its motion with respect to Turner Construction¹ but continues to pursue the motion as to James E. Roberts-Obayashi Corporation.

The insurance coverage issue that is the subject of this motion has been decided by the Alameda County Superior Court. See Exhibit 5 to Declaration of Martin L. Seeger, filed February 1, 2006. Judgment was entered by the Superior Court in Roberts-Obayashi v. Acceptance Insurance Companies, et al, Alameda Superior Court Case No. RG04150387, on March 28, 2006. See, attached.

It appears that the Superior Court has resolved this issue and that, therefore, there is no case or controversy pending in this Court. Plaintiff objects on the ground that the Superior Court's judgment is not yet final as the time for appeal has not

¹Accordingly, Turner's Request for Leave to File Opposition Nunc Pro Tunc is moot.

lapsed. This Court DECLINES to exercise jurisdiction at this time, but will not dismiss this case until the time for appeal in the Superior Court has lapsed. By Wednesday, June 14, 2006, plaintiff must file with the Court, deliver to chambers, and serve on opposing counsel a statement updating the Court about the status of the appeal relating to the March 28th judgment. After receiving plaintiff's June 14th submission, the Court will issue an order either dismissing the case or notifying the remaining parties about how the Court intends to proceed. IT IS SO ORDERED. Dated: April 5, 2006 s/ Wayne D. Brazil United States Magistrate Judge Copies to: Parties, WDB, stats.